

REMARKS

Claims 1-5, 8, 10, 12, 14, 16-23 and 31-33 are pending in the application. Claims 1, 2, 20 and 21 have been amended herein without prejudice and acquiescence. No new matter has been added as a result of the claim amendments. Support for the claim amendments can be found throughout the specification and the claims as originally filed, in particular, the limitations of claim 16 have been incorporated into independent claims 1, 2, 20 and 21. New claim 34 has been added and support for claim 34 can be found at paragraph [0053] of the published application (US 2005/0160662).

The issues outstanding in this application are as follows:

- Claims 1-5, 8, 10, 12, 14, 16-23 and 31-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jordan (U.S. Patent No. 5,826,369) in combination with Reid (U.S. Patent No. 4,981,495) or Reid (U.S. Patent No. 4,941,968).

I. Claims 1-5, 8, 10, 12, 14, 16-23 and 31-33; 35 U.S.C. § 103(a)

Claims 1-5, 8, 10, 12, 14, 16-23 and 31-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jordan (U.S. Patent No. 5,826,369) in combination with Reid (U.S. Patent No. 4,981,495) or Reid (U.S. Patent No. 4,941,968). The Applicants respectfully traverse.

Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), controls the consideration and determination of obviousness under 35 U.S.C. 103(a); *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734-35, 167 L. Ed. 2d 705, 715 (U.S. 2007). The four factual inquiries enunciated therein for determining obviousness are: (1) determining the scope and contents of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating evidence of secondary considerations.

In order to assess the scope and content of the prior art properly, a thorough understanding of the invention must be acquired by studying Applicants' claims and the specification. M.P.E.P. § 2141. Thus, the inquiry begins with construction of Applicants'

claims, in which the claims as presented herein are relied upon. Next, when ascertaining the differences between the prior art and the claims at issue, both the invention and the prior art references as a whole must be considered, and **all** claim limitations must be considered when determining patentability of Applicants invention. M.P.E.P. §§ 2141; 2143. When this is properly done in this case, as shown below, it becomes clear that differences exist that preclude obviousness. And finally, the test for obviousness requires identification of a reasonable basis for combining the claimed elements in the claimed fashion. *KSR*, 127 S. Ct. at 1741; M.P.E.P. §2143. As shown below, this requirement is not met in this case, and no *prima facie* case for obviousness is made.

Claims 1 and 20 recite the limitation of “wherein a ratio of grams of beta-carotene to grams of 2,2,4-trimethyl-6-ethoxy-1,2-dihydroquinoline in the additive is from about 20:1 to about 1:1”, and claims 2 and 21 recite the limitation of “wherein a ratio of a first additive to grams of a stabilizing compound in the additive is from about 20:1 to about 1:1.” As the Examiner states on page 2 of the Action, the Jordan reference fails to teach 2,2,4-trimethyl-6-ethoxy-1,2-dihydroquinoline or a stabilizing compound. The Examiner relies on the Reid reference for this teaching. The Reid reference fails to teach beta-carotene. Neither the Jordan reference, the Reid references or the combination of the Jordan and Reid references teach the limitation of “wherein a ratio of a first additive (beta-carotene) to grams of a stabilizing compound (2,2,4-trimethyl-6-ethoxy-1,2-dihydroquinoline) in the additive is from about 20:1 to about 1:1” as recited in the independent claims. Also, neither reference provides either an implicit or explicit teaching, suggestion or motivation for combining a stabilizing compound (2,2,4-trimethyl-6-ethoxy-1,2-dihydroquinoline) with a first additive (beta-carotene). The combination of Jordan and Reid does not account for **all** claim limitations. Therefore, the combination of the Jordan and Reid references **does not** support a *prima facie* obviousness rejection, and the Applicants respectfully request that the rejection be removed.

If an independent claim is non-obvious under 35 U.S.C. § 103(a), then any claim depending therefrom is by definition non-obvious. Applicant respectfully submits that claims 3-5, 8, 10, 12, 14, 16-19, 22, 23 and 31-33 depend at least in part from independent claims 1, 2, 20 or 21. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1-5, 8, 10, 12, 14, 16-23 and 31-33 under 35 U.S.C. §

103(a) as being unpatentable over Jordan (U.S. Patent No. 5,826,369) in combination with Reid (U.S. Patent No. 4,981,495) or Reid (U.S. Patent No. 4,941,968).

II. Conclusion

In view of the above, applicant believes the pending application is in condition for allowance.

The fees for a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 and a Petition for Extension of Time for five months are being submitted with this response. Applicant believes no other fee is due; however, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P03708US0 from which the undersigned is authorized to draw.

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Respectfully submitted,

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